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SUBJECT: UKRAINE: NEW LAWS ON PUBLIC PROCUREMENT, BUSINESS
DEREGULATION AND REAL ESTATE

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¶1. (SBU) Summary. Ukraine's Verkhovna Rada (parliament) passed legislative reforms on public procurement, business deregulation, and land and property title registration that had long been advocated for by the World Bank and USAID. Analysts note that these three laws represent positive progress but that additional amendments may be needed to bring the laws into line with international norms. One of the key intents of the new law on the procurement system, through which as much as 20% of GDP passes, is to reduce corruption. However, the World Bank is concerned about the law's provision for what has been criticized as a non-transparent dispute settlement body. End Summary.

PROCUREMENT LAW ADOPTED

¶2. (U) On February 11, the Rada passed a public procurement law, essentially restoring rules on procurement that had been in place before 2006. In the new law, the Ministry of Economy is tapped to authorize procurements. According to the law, the Ministry should streamline state purchasing by establishing competitive procurement methods and publishing requirements for tenders.

¶3. (SBU) The passage of the law is a positive development and should help reduce, but not eliminate, corruption in the procurement system. In 2008, 20% of GDP passed through the procurement system; however, in 2009 the estimate is much lower 5-9% due to problems with the law and regulation of the sector. Critics noted that the dispute settlement body, established under the Ministry of Economy, would be open to "political compromise." Consisting of seven government members and seven independent experts, the body will be overseen by two Rada Committees. The new law was supported by MP Irina Akimova and the Party of Regions. However, BYuT MP Oleh Lyashko criticized the law for giving too much authority to the Rada Finance and Banking Committee, controlled by Party of Regions Mykola Azarov, and the Economic Policy Committee, controlled by BYuT's Serhiy Osyka. Prime Minister Yulia Tymoshenko has asked President Yushchenko to veto the law on the grounds that the dispute settlement body was deficient. Yushchenko has not yet signed the law into force, but he is expected to do so.

¶4. (U) The previous public procurement law was repealed by the Rada in 2008, after significant amendments in 2006 had made the law grossly dysfunctional. In the meantime, procurement was governed by Cabinet of Ministers' resolutions that had unclear legal authority.

AMENDMENTS ON PROPERTY RIGHTS

¶5. (U) A decade-long attempt to unify real estate ownership rights took a step forward on February 11 when the Rada amended the Land

Code and the 2004 land registration law. The law explicitly assigned overall authority for registration of ownership rights of land and buildings to the Ministry of Justice (MOJ).

¶16. (SBU) Having sole control over real estate registries, the MOJ could help establish a unified land registry, considered to be an essential condition for land to be openly and transparently traded in Ukraine. USAID provided assistance on the development of this law, and is already preparing to develop unified registries in Crimea. Once developed, the pilot projects in Crimea could serve as models for other registries throughout Ukraine.

¶17. (SBU) Ukraine had maintained the obsolete Soviet-era system of separate land and building property registration. In the absence of clear ownership titles, the Ukrainian property market was rife with shady deal-making, causing widespread investor frustration. Turf battles between GOU agencies over authority to resolve claims had perpetuated the corrupt system.

PERMITS LAW AMENDED

¶18. (SBU) The Rada also adopted legislation to simplify permitting for entrepreneurs. The law introduced a "silent consent" principle on permit issuing and established regional permit centers. According to experts, however, efficient implementation of these provisions requires additional regulatory acts and legislative amendments. Procedural issues over the subordination of the permit centers and the process for closing businesses are not clearly spelled out in the law.

COMMENT

9.(SBU) These newly adopted laws send an important positive signal

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to investors, who have long lobbied to reduce corruption and improve the business climate. Nonetheless, the laws have deficiencies and inconsistencies, resulting from hasty political compromises made just days after the February 7 second round of Ukraine's presidential election. If President Yushchenko indeed signs the laws into force, we should take this as a win for the economy and start work, including with our business community, to suggest implementing mechanisms or amendments where needed.

TEFFT